



CRL.OP(MD). No.1413 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP(MD). No.1413 of 2023

and

CRL.MP(MD). No.1255 of 2023

1. R.Mani

2. Thangaraj

3. Subramani ... Petitioners / Accused 1 to 3

Vs.

Kabilan ... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to Spl.S.C. No. 36 of 2022 on the file of the learned I Additional District and Sessions Judge (PCR), Trichy and quash the same.

For Petitioners : M/s.K.Arunraj

For Respondent : M/s.M.R.Srinivasan
for M/s.S.Muthukrishnan



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ORDER

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This criminal original petition has been filed to quash the proceedings in Spl.S.C. No. 36 of 2022 on the file of the learned I Additional and Sessions Judge (PCR), Trichy.

2. Heard the learned counsel on either side and perused the materials placed on record.

3. The respondent/complainant is a practicing advocate. He seems to have applied for a patta and he went to the revenue office on 12.08.2021 to enquire about the same. There was a wordy quarrel with the officers working in the Taluk Office and the allegation is that the respondent/complainant was assaulted and he was abused in filthy language and he was threatened. Initially based on the complaint given by the respondent, an FIR was registered in Crime No. 1168 of 2021 and it was investigated and closure report was filed as mistake of fact. Thereafter, a private complaint came to be filed by the respondent which was entertained and cognizance was taken and process was issued to the petitioner. Aggrieved by the same, the present petition has been filed



before this Court.

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4. When the matter came up for hearing on 27.01.2023, this Court passed the following order:-

“The learned counsel for the petitioners would submit that the first petitioner is working as Office Assistant in Srirangam Taluk office and the petitioners 2 and 3 are also Government Servants, who are working along with him in the Government Office. On 12.08.2021, the respondent, who is an Advocate had come to their office and also abused and assaulted them. In respect of which, on the complaint given by the first petitioner, a case in Crime No.696 of 2021 was registered against him for the offence under Sections 294(b), 323 and 353 IPC on 13.08.2021. As a counter blast, the respondent had given a complaint before the very same respondent, in respect of which, a case in Crime No.1168 of 2021 was registered on 23.12.2021 against the petitioners. The Srirangam Police, after conducting due enquiry, had referred the case of the respondent as 'Mistake of Fact'. However, without filing any protest petition, the respondent has straightaway, on the very same set of false allegations, filed a private complaint against the petitioners. He would further submit that it is a case of



personal vendetta where a false complaint has been given.

2.Heard. Perused the materials available on record.

3.There shall be an order of interim stay of all further proceedings in Spl.S.C.No.36 of 2022, on the file of the learned I Additional District and Sessions Judge (PCR), Trichy, for a period of four weeks.

4.The personal appearance of the petitioners in Spl.S.C.No.36 of 2022, before the learned I Additional District and Sessions Judge (PCR), Trichy, is dispensed with for the present.

5.Notice to the respondent returnable by four weeks.

6.The learned counsel for the petitioners is directed to take private notice on the respondent.

7.Post the matter after four weeks.”



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5. In the case in hand, complaints were given from both sides and based on the complaint given by the first petitioner who was working as a Revenue Inspector in Taluk Office, Crime No. 696 of 2021 was registered against the respondent. For the same incident, the respondent also gave a complaint and crime No. 1168 of 2021 was registered against the petitioners herein. The case and counter case was investigated by the police and both the FIRs were closed as mistake of fact.

6. The respondent/complainant filed a private complaint thereafter. The respondent has also mentioned about the earlier FIR registered which resulted in closure as mistake of fact.

7. The core issue that arises for consideration in the present case is as to whether the Court below before taking cognizance ought to have considered the materials collected by the police and the closure report filed by the police in both the cases as mistake of fact.

8. The above issue is no longer *res integra* and it is covered by the earlier orders passed by this Court. Useful reference can be made to the



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judgment of this Court in *Narayanamma and Others Vs. Chikka Venkateshaiah* reported in (2019) 2 LW(Crl) 522 and *Alaguthangamani and Others Vs. Saravanan* reported in 2022 (4) MLJ (Crl) 156. In these judgments, this Court has categorically held that the Court has to necessarily apply its mind on the closure report and the materials that were collected by the police while filing the closure report.

9. In the case in hand, admittedly, there was a case and counter case and both the FIRs ended up by filing closure report as mistake of fact. While so, the private complaint came to be filed before the Court below on the same set of facts. There is no bar in the Court below entertaining the private complaint on the same set of facts. However, while taking cognizance, the Court below has to necessarily deal with the closure report that has been filed in both the FIRs and the materials that were collected by the police to justify coming to such a conclusion. Admittedly, none of these reports and the materials were filed along with the private complaint and the Court had no occasion to apply its mind.



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10. In the light of the above discussion, the cognizance order passed by the Court below in Spl. S.C. No. 36 of 2022 is hereby set aside. The Court below has to call for the closure report that has been filed in Crime Nos. 696 of 2021 and 1168 of 2021 on the file of the Srirangam Police Station, Tiruchirappalli and also the materials that were collected by the police while investigating the case and counter case. The Court has to apply its mind on those materials and the closure report and thereafter, take a decision regarding taking cognizance of the private complaint filed by the respondent.

11. In the result, this Criminal Original Petition is allowed with the above directions. Consequently, the connected miscellaneous petition is closed.

05.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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1. The First Additional District and Sessions Judge (PCR),
Trichy.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

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Order made in
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